

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

Morning session:

Set: 9:30 AM (AST)

Started: 9:34 AM (AST)

Ended: 1:18 PM (AST)

Afternoon session:

Set: 2:35 PM (AST)

Started: 2:36 PM (AST)

Ended: 4:38 PM (AST)

MINUTES OF PROCEEDINGS

BEFORE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

DATE: November 15, 2021

U.S. MAGISTRATE JUDGE JUDITH G. DEIN

COURTROOM DEPUTY: Carmen Tacoronte

COURT REPORTER: Amy Walker

In Re: The Financial Oversight & Management Board for Puerto Rico <i>as representative of</i> The Commonwealth of Puerto Rico et al., Debtors	3:17-BK-3283 (LTS) PROMESA Title III (Jointly Administered)
In Re: The Financial Oversight & Management Board for Puerto Rico <i>as representative of</i> The Employees Retirement System of the Government of the Commonwealth of Puerto Rico, Debtor	3:17-BK-3566 (LTS) PROMESA Title III (Jointly Administered)
In Re: The Financial Oversight & Management Board for Puerto Rico <i>as representative of</i> Puerto Rico Public Buildings Authority, Debtor	3:19-BK-5523 (LTS) PROMESA Title III (Jointly Administered)

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5th day of Confirmation Hearing held.

Today's agenda was filed at Docket No. 19194 in 3:17-BK-3283.

I. Oral Argument

1. Preemption

The parties were heard on the analytical basis and anticipated operation and scope of preemption arising from section 89.3 and Exhibit K of the Plan. The Oversight Board also addressed the representation in the Jaresko Declaration that “a comprehensive list of statutes, which the Oversight Board has identified as inconsistent with, and preempted by, PROMESA will be submitted in advance of the confirmation hearing.”

Supporting parties:

- Attorney Martin Bienenstock on behalf of the Oversight Board.
- Attorney Susheel Kirpalani on behalf of the Lawful Constitution Debt Coalition
- Attorney Atara Miller on behalf of Ambac Assurance

Objecting parties:

- Attorney José Luis Barrios on behalf of Asociación de Maestros de PR
- Peter Hein, pro se party

2. Deemed Rejection of the Commonwealth's Contractual Obligations to Accrue Pension Benefits

The parties addressed the extent to which the deemed rejection of the Commonwealth's contractual obligations to accrue pension benefits supports a rejection damages claim for the denial of future accruals and the implications of such a claim for feasibility.

Supporting party:

- Attorney Martin Bienenstock on behalf of the Oversight Board.

Objecting party:

- Attorney José Luis Barrios on behalf of Asociación de Maestros de PR

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3. Takings Clause of the United States Constitution

The parties addressed (i) whether and to what extent the exercise of discretion by the Court under 11 U.S.C. § 944(c)(1) to exempt some or all takings claims from discharge would render the Plan unfeasible; (ii) arguments concerning the meaning of “just compensation” in the context of bankruptcy law; (iii) arguments concerning the Oversight Board’s proposed distinction between takings claims that are secured and those that are unsecured; (iv) whether the reduction of a Takings Clause claim to a judgment or a settlement agreement affects whether it is still subject to the Takings Clause; and (v) how the three factors identified in Penn Central Transportation v. City of New York, 438 U.S. 104, 124 (1978), apply to takings claims that are not per se takings claims.

Supporting parties:

- Attorney Martin Bienenstock on behalf of the Oversight Board.
- Attorney Susheel Kirpalani on behalf of the Lawful Constitution Debt Coalition

Objecting parties:

- Attorney Rafael González Valiente on behalf of Suiza Dairy, Inc.
- Peter Hein, pro se party
- Attorney Enrique Almeida Cooperativa de Ahorro y Crédito Abraham Rosa, Cooperativa de Ahorro y Crédito de Ciales, Cooperativa de Ahorro y Crédito de Rincón, Cooperativa de Ahorro y Crédito de Vega Alta, Cooperativa de Ahorro y Crédito Dr. Manuel Zeno Gandía and Cooperativa de Ahorro y Crédito de Juana Diaz
- Attorney Charles Cuprill on behalf of Sucesión Mandry Mercado
- Attorney Alexis Fuentes Hernández on behalf of Maruz Real Estate Corp.
- Attorney María Mercedes Figueroa y Morgade on behalf of Demeterio Amador, Inc. and Demeterio Amador
- Attorney Eduardo Capdevilla on behalf of Finca Matilde, Inc.
- Attorney David Carrión Baralt on behalf of PFZ Properties, Inc.

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4. Third- Party Release, Exculpation, and Injunction Provisions

The parties were heard on the remaining objections concerning release, exculpation, and injunction provisions and/or to report concerning the resolution of such issues.

Supporting parties:

- Attorney Brian Rosen on behalf of the Oversight Board.
- Attorney William Natbony on behalf of the Monolines

Objecting parties:

- Attorney Enrique Almeida Cooperativa de Ahorro y Crédito Abraham Rosa, Cooperativa de Ahorro y Crédito de Ciales, Cooperativa de Ahorro y Crédito de Rincón, Cooperativa de Ahorro y Crédito de Vega Alta, Cooperativa de Ahorro y Crédito Dr. Manuel Zeno Gandía and Cooperativa de Ahorro y Crédito de Juana Diaz
- Peter Hein, pro se party

Also heard: Attorney Howard Steel on behalf of the Underwriter Defendants

5. Solicitation

Parties addressed (i) whether the votes of Retail Investors were improperly solicited in violation of Section 1125(b) of the Bankruptcy Code and (ii) whether designation of any votes is required pursuant to Section 1126(e) of the Bankruptcy Code.

Supporting party:

- Attorney Brian Rosen on behalf of the Oversight Board.

Objecting parties:

- Arthur Samodovitz, pro se party

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- Peter Hein, pro se party

Also heard: Attorney Tristan Axelrod on behalf of the Special Claims Committee

The Oversight Board and Peter Hein, pro se were ordered to file a Supplemental Joint Statement addressing whether there remains a dispute about the way the Plan operates with respect to non-voting creditors and voting creditors (for and against the Plan).

6. Objection of International Union, UAW and Service Employees International Union to Second Revised Confirmation Order [ECF No. 19162]

Objecting party:

- Attorney Peter DeChiara on behalf of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Service Employees International Union
- Attorney Martin Bienenstock on behalf of the Oversight Board

Housekeeping matters discussed. The Oversight Board requested that the record be reopened and that they be allowed to file the certifications in relation to the most recent versions of the Plan of Adjustment. The request was granted.

Further Confirmation Hearing set for November 17, 2021 at 9:30 AM (AST) before Judge Laura Taylor Swain.

s/Carmen Tacoronte

Carmen Tacoronte

PROMESA Case Administrator